

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHASE WILLIAMS and WILLIAM ZHANG,
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

BLOCK.ONE, BRENDAN BLUMER, and
DANIEL LARIMER,

Defendants.

Civ. No. 1:20-cv-02809-LAK

CLASS ACTION

CRYPTO ASSETS OPPORTUNITY FUND
LLC and JOHNNY HONG, Individually and on
Behalf of All Others Similarly Situated,

Plaintiffs,

v.

BLOCK.ONE, BRENDAN BLUMER, DANIEL
LARIMER, IAN GRIGG, and BROCK PIERCE,

Defendants.

Civ. No. 1:20-cv-03829-LAK

CLASS ACTION

**DECLARATION OF EDMUND POLUBINSKI III IN SUPPORT OF DEFENDANTS'
MOTION TO DISMISS THE AMENDED CLASS ACTION COMPLAINT**

I, Edmund Polubinski III, declare pursuant to 28 U.S.C. § 1746, as follows:

1. I am an attorney admitted to practice before this Court, and I am a partner of the law firm of Davis Polk & Wardwell LLP, counsel for defendants Block.one, Daniel Larimer, and Brock Pierce in the above-captioned matter. I submit this declaration in support of Defendants' Motion to Dismiss the Amended Class Action Complaint ("Amended Complaint").

2. Attached as Exhibit 1 is a true and correct copy of the EOS.IO "Technical White Paper," dated June 5, 2017, which the Amended Complaint cites at Paragraph 52, and which is publicly available at: <https://github.com/bytemaster/EOSIO-Documentation/blob/f715ee9066e67453c20af719954ee09b060e5be2/TechnicalWhitePaper.md> (last accessed October 24, 2020).

3. Attached as Exhibit 2 is a true and correct copy of the EOS.IO "Technical White Paper," dated March 16, 2018, which the Amended Complaint cites at Paragraph 7, and which is publicly available at: <https://github.com/EOSIO/Documentation/blob/master/TechnicalWhitePaper.md> (last accessed October 28, 2020).

4. Attached as Exhibit 3 is a true and correct copy of "EOS—An Introduction," which the Amended Complaint cites at Paragraph 54, and which is publicly available at: https://www.iang.org/papers/EOS_An_Introduction-BLACK-EDITION.pdf (last accessed October 28, 2020).

5. Attached as Exhibit 4 is a true and correct copy of the "June 22, 2017, EOS Token Purchase Agreement," which the Amended Complaint cites at Paragraph 57, and which is publicly available at:

<https://davidgerard.co.uk/blockchain/references/EOS%20Token%20Purchase%20Agreement%20-%20June%202022,%202017.pdf> (last accessed October 28, 2020).

6. Attached as Exhibit 5 is a true and correct copy of the “September 4, 2017 EOS Token Purchase Agreement,” which is publicly available at: https://d340lr3764rrcr.cloudfront.net/purchase_agreement/block.one+-+EOS+Token+Purchase+Agreement+-+September+4%2C+2017.pdf (last accessed October 28, 2020).

7. Attached as Exhibit 6 is a true and correct copy of the Frequently Asked Questions webpage as it appeared on the EOS website in September 2017, which the Amended Complaint cites at Paragraph 118, and which is publicly available at <https://web.archive.org/web/20170928140458/https://eos.io/faq.html> (last accessed October 29, 2020).

8. Attached as Exhibit 7 is a true and correct copy of the Order Instituting Cease-And-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933: *In the Matter of Block.one*, Release No. 10714 (Sept. 30, 2019), which the Amended Complaint cites at Paragraph 25, and which is publicly available at: <https://www.sec.gov/litigation/admin/2019/33-10714.pdf> (last accessed October 28, 2020).

9. Attached as Exhibit 8 is a true and correct copy of the Report of the Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO, Exchange Act Release No. 81207 (the “DAO Report”), 117 SEC Docket 5 (July 25, 2017), which the Amended Complaint cites at Paragraph 77, and which is publicly available at: <https://www.sec.gov/litigation/investreport/34-81207.pdf> (last accessed October 28, 2020).

10. Attached as Exhibit 9 is a true and correct copy of the SEC *Investor Bulletin: Initial Coin Offerings*, SEC (July 25, 2017), which is publicly available at: https://www.sec.gov/oiea/investor-alerts-and-bulletins/ib_coinofferings (last accessed September 19, 2020).

11. Attached as Exhibit 10 is a true and correct copy of the Order Instituting Cease-And-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933: *In the Matter of Munchee Inc.*, Release No. 10445, 118 SEC Docket 5 (Dec. 11, 2017), which is publicly available at: <https://www.sec.gov/litigation/admin/2017/33-10445.pdf> (last accessed October 28, 2020).

12. Attached as Exhibit 11 is a true and correct copy of the “Statement on Cryptocurrencies and Initial Coin Offerings,” Jay Clayton, Chairman, SEC, *Statement on Cryptocurrencies and Initial Coin Offerings* (Dec. 11, 2017), which the Amended Complaint cites at Paragraph 120, and which is publicly available at: https://www.sec.gov/news/public-statement/statement-clayton-2017-12-11#_ftnref7 (last accessed September 19, 2020).

13. Attached as Exhibit 12 is a true and correct copy of SEC Chairman Jay Clayton’s “Testimony on Virtual Currencies,” Jay Clayton, Chairman, SEC, *Chairman’s Testimony on Virtual Currencies: The Roles of the SEC and CFTC*, SEC (Feb. 6, 2018), which is publicly available at: <https://www.sec.gov/news/testimony/testimony-virtual-currencies-oversight-role-us-securities-and-exchange-commission> (last accessed October 19, 2020).

14. Attached as Exhibit 13 is a true and correct copy of the *Statement on Potentially Unlawful Online Platforms for Trading Digital Assets*, SEC (Mar. 7, 2018), which is publicly available at: <https://www.sec.gov/news/public-statement/enforcement-tm-statement-potentially-unlawful-online-platforms-trading> (last accessed October 19, 2020).

15. Attached as Exhibit 14 is a true and correct copy of the May 3, 2018 class action complaint filed in the San Francisco Superior Court styled *Coffey v. Ripple Labs, Inc., et al.*, Case No. CGC-18-566271, and removed to Federal Court in the Northern District of California, Case No. 4:18-cv-02386-PJH.

16. Attached as Exhibit 15 is a true and correct copy of SEC Press Release (No. 2018-88), *The SEC Has an Opportunity You Won't Want To Miss: Act Now!* (May 16, 2018), which is publicly available at: <https://www.sec.gov/news/press-release/2018-88> (last accessed October 19, 2020).

17. Attached as Exhibit 16 is a true and correct copy of SEC Director William Hinman's speech, "Digital Asset Transactions: When Howey Met Gary (Plastic)," William Hinman, Director, Division of Corporate Finance, SEC, *Digital Asset Transactions: When Howey Met Gary (Plastic), Remarks at the Yahoo Finance All Markets Summit: Crypto* (June 14, 2018), which is publicly available at: <https://www.sec.gov/news/speech/speech-hinman-061418> (last accessed October 19, 2020).

18. Attached as Exhibit 17 is a true and correct copy of the October 3, 2018 complaint filed in Federal Court in the Southern District of California styled *SEC v. Blockvest, LLC*, Case No. 3:18-cv-02287-GPC-BLM.

19. Attached as Exhibit 18 is a true and correct copy of the Order Instituting Cease-And-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933: *In the Matter of Paragon Coin, Inc.*, Release No. 10574 (Nov. 16, 2018), which is publicly available at: <https://www.sec.gov/litigation/admin/2018/33-10574.pdf> (last accessed October 28, 2020).

20. Attached as Exhibit 19 is a true and correct copy of the SEC's *Statement On Digital Asset Securities Issuance and Trading*, SEC (Nov. 16, 2018), which is publicly available

at: <https://www.sec.gov/news/public-statement/digital-asset-securities-issuance-and-trading> (last accessed October 19, 2020).

21. Attached as Exhibit 20 is a true and correct copy of the March 7, 2019 Letter from Jay Clayton, Chairman, SEC, to The Hon. Tedd Budd, Congressman, U.S. House of Representatives (Mar. 7, 2019), which is publicly available at: <https://digitalchamber.org/wp-content/uploads/2019/03/Budd-et-al-Digital-Tokens-ES157408-Response-002.pdf> (last accessed October 28, 2020).

22. Attached as Exhibit 21 is a true and correct copy of the April 3, 2018 consolidated class action complaint filed in Federal Court in the Northern District of California styled *In re Tezos Litigation*, Case No. 3:17-cv-06779-RS.

23. Attached as Exhibit 22 is a true and correct copy of the Order Instituting Cease-And-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933: *In the Matter of CarrierEQ, Inc. d/b/a Airfox*, Release No. 10575 (Nov. 16, 2018), which is publicly available at: <https://www.sec.gov/litigation/admin/2018/33-10575.pdf> (last accessed October 28, 2020).

24. Attached as Exhibit 23 is a true and correct copy of the September 18, 2020 amended class action complaint filed in this case.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 2, 2020
New York, New York

By: /s/ Edmund Polubinski III

Edmund Polubinski III

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been served on all counsel of record through the Court's ECF System on November 2, 2020.

/s/ Edmund Polubinski III

Edmund Polubinski III